

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

JESSIE RIVERA  
AKA SLAVADOR MELENDEZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**3 09 0672**

No. 3:09mc0139  
Judge Campbell

**ORDER**

The Court has before it a *pro se* petition seeking a writ of error *audita querela* under 28 U.S.C. § 1651. The petitioner, a prisoner in the Williamsburg Federal Correctional Institution (Williamsburg FCI) in Salters, South Carolina, has submitted an application to proceed *in forma pauperis*.

It appears from the petitioner's application that he cannot afford to pay the filing fee. Therefore, the Clerk will **FILE** the petition *in forma pauperis*. 28 U.S.C. §§ 1915(a), (b)(4).

The petitioner is herewith assessed the civil filing fee of three hundred fifty dollars (\$350.00). Pursuant to 28 U.S.C. §§ 1915(b)(1)(A) and (B), the custodian of the petitioner's inmate trust fund account at the institution where he now resides is directed to submit to the Clerk of Court, as an initial payment, whichever is the greater of:

- (a) twenty percent (20%) of the average monthly deposits to the petitioner's inmate trust fund account; or
- (b) twenty percent (20%) of the average monthly balance in the petitioner's inmate trust fund account for the prior six (6) months.

Thereafter, the custodian shall submit twenty percent (20%) of the petitioner's preceding monthly income, or income credited to the petitioner's inmate trust fund account for the preceding month,


but only when his monthly income exceeds ten dollars (\$10.00). Payments shall continue until the \$350.00 filing fee has been paid in full to the Clerk of Court as prescribed by 28 U.S.C. § 1914(a). 28 U.S.C. § 1915(b)(2).

As provided in the accompanying Memorandum, the petition is **DISMISSED** as frivolous. 28 U.S.C. §§ 1915(e)(2)(B)(i); 1915A(b)(1). Because an appeal from the judgment rendered herein would **NOT** be taken in good faith, the petitioner is **NOT** certified to pursue an appeal *in forma pauperis*. 28 U.S.C. § 1915(a)(3). Nevertheless, should the petitioner file a notice of appeal, he either must pay the Clerk of Court the full four hundred fifty-five dollar (\$455.00) appellate filing fee, or submit a new application to proceed *in forma pauperis* with a certified copy of his inmate trust account statement for the six (6) month period preceding the filing of his notice of appeal. 28 U.S.C. §§ 1915(a)(1)-(a)(2).

The Clerk is **DIRECTED** to send a copy of this Order to the Warden at Williamsburg FCI to ensure that the custodian of the petitioner's inmate trust fund account complies with the portion of the Prison Litigation Reform Act that pertains to the payment of filing fees. Should the petitioner be transferred from his present place of confinement, the custodian of his inmate trust fund account shall ensure that a copy of this Order follows the petitioner to his new place of confinement. All payments made pursuant to this Order shall be forwarded to the Clerk of Court for the Middle District of Tennessee.

Entry of this Order shall constitute the judgment in this action.

It is so **ORDERED**.

  
Todd Campbell  
United States District Judge